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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REID WILLIAM ROGERS,
Petitioner,
v.
F. FOULK, Warden,
Respondent.

No. C 13-3794 SI (pr)

ORDER ON INITIAL REVIEW

INTRODUCTION

Reid William Rogers, an inmate at Corcoran State Prison, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition is now before the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases.

BACKGROUND

The petition and attachments thereto disclose the following: Following a negotiated guilty plea, petitioner was convicted in the Sonoma County Superior Court of “assault, great bodily injury, oral copulation, threat of force, theft, [and] kidnapping.” Docket # 1 at 2. He was sentenced on February 2, 2009 to 23 years in prison. He appealed. His conviction was affirmed by the California Court of Appeal in 2009. He also filed state habeas petitions, apparently starting in 2012.

Petitioner then filed this action, seeking a writ of habeas corpus. His federal petition has a signature date of June 25, 2013, and was mailed to the U.S. District Court for the Central District of California in an envelope with what appears to be a July 10, 2013 postmark. The

1 petition later was transferred to the Northern District of California.

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DISCUSSION

4 This court may entertain a petition for writ of habeas corpus "in behalf of a person in
5 custody pursuant to the judgment of a State court only on the ground that he is in custody in
6 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose*
7 *v. Hodes*, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an order
8 directing the respondent to show cause why the writ should not be granted, unless it appears
9 from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. §
10 2243. Under Rule 4 of the Rules Governing Section 2254 Cases In The United States District
11 Courts, a district court may also order the respondent to file another pleading where neither
12 summary dismissal nor service is appropriate.

13 The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which became
14 law on April 24, 1996, imposed for the first time a statute of limitations on petitions for a writ
15 of habeas corpus filed by state prisoners. Petitions filed by prisoners challenging non-capital
16 state convictions or sentences must be filed within one year of the latest of the date on which:
17 (1) the judgment became final after the conclusion of direct review or the time passed for
18 seeking direct review; (2) an impediment to filing an application created by unconstitutional
19 state action was removed, if such action prevented petitioner from filing; (3) the constitutional
20 right asserted was recognized by the Supreme Court, if the right was newly recognized by the
21 Supreme Court and made retroactive to cases on collateral review; or (4) the factual predicate
22 of the claim could have been discovered through the exercise of due diligence. *See* 28 U.S.C.
23 § 2244(d)(1). Time during which a properly filed application for state post-conviction or other
24 collateral review is pending is excluded from the one-year time limit. *See id.* § 2244(d)(2).

25 The petition in this action was filed more than a year after petitioner's conviction became
26 final, and may be untimely under the AEDPA's one-year limitation period. This apparent
27 procedural problem should be addressed before the court reaches the merits of the claims raised
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1 in the petition. If the petition is time-barred, the litigants and court need not expend resources
2 addressing the claims in the petition. Accordingly, pursuant to Rule 4 of the Rules Governing
3 Section 2254 Cases In The United States District Courts, respondent must either (1) move to
4 dismiss the petition on the ground that it is untimely, or (2) inform the court that respondent is
5 of the opinion that a motion to dismiss is unwarranted in this case.

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CONCLUSION

8 Good cause appearing therefor,

9 1. The clerk shall serve by certified mail a copy of this order and the petition upon
10 respondent and respondent's attorney, the Attorney General of the State of California. The clerk
11 shall also serve a copy of this order on petitioner.

12 2. Respondent must file with the court and serve upon petitioner, on or before
13 **December 13, 2013**, a motion to dismiss the petition or a notice that respondent is of the opinion
14 that a motion to dismiss is unwarranted.

15 3. If petitioner wishes to oppose the motion to dismiss, he must do so by filing an
16 opposition with the court and serving it upon respondent on or before **January 24, 2014**.

17 4. Respondent may file and serve a reply on or before **February 7, 2014**.

18 5. The motion will be deemed submitted as of the date the reply brief is due. No
19 hearing will be held on the motion. If respondent notifies the court that a motion to dismiss is
20 unwarranted or the motion to dismiss is decided against respondent, the court will then
21 determine whether to require an answer to the petition.

22 IT IS SO ORDERED.

23 DATED: October 9, 2013



SUSAN ILLSTON
United States District Judge

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